



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R04-OAR-2017-0050; FRL-9984-10-Region 4]**

### **Air Plan Approval; TN: Revisions to New Source Review**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving changes to the Tennessee State Implementation Plan (SIP) to revise New Source Review (NSR) regulations. Specifically, EPA is approving the portions of a SIP revision submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), on May 28, 2009, that modify the definitions of “baseline actual emissions.” This action is being taken pursuant to the Clean Air Act (CAA or Act).

**DATES:** This rule is effective **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2017-0050. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available

either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Akers can be reached via telephone at (404) 562-9089 or via electronic mail at [akers.brad@epa.gov](mailto:akers.brad@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. What Action is EPA Taking?**

On May 28, 2009, TDEC submitted a SIP revision to EPA for approval that contains changes to Tennessee's SIP-approved major NSR permitting regulations at Tennessee Air Pollution Control Regulations (TAPCR) 1200-3-9-.01 - "Construction Permits," including the adoption of federal requirements and the modification of certain other provisions. In this action, EPA is approving the portions of this SIP submission that make changes to the definitions of "baseline actual emissions" in Tennessee's SIP-approved Prevention of Significant Deterioration (PSD) and nonattainment NSR (NNSR) regulations at TAPCR 1200-3-9-.01(4) - "Prevention of Significant Air Quality Deterioration" and 1200-3-9-.01(5)(b) - "Nonattainment Areas,"

respectively. Tennessee's NSR regulations at TAPCR 1200-3-9-.01 were last revised in the SIP on July 25, 2013 (78 FR 44886).

On June 20, 2018 (83 FR 28577), EPA published a notice of proposed rulemaking (NPRM) proposing to approve the portions of Tennessee's SIP revision described in Section II, below. The details of Tennessee's SIP revision and the rationale for EPA's actions are further explained in the NPRM. EPA received no adverse comments on the proposed approval.

## **II. Analysis of Tennessee's Submittal**

Tennessee's May 28, 2009, submittal revises the SIP-approved definitions of "baseline actual emissions" at TAPCR 1200-3-9-.01(4)(b)(45)(i)(III) and 1200-3-9-.01(4)(b)(45)(ii)(IV) for PSD, and 1200-3-9-.01(5)(b)(1)(xlvii)(I)III and 1200-3-9-.01(5)(b)(1)(xlvii)(II)IV for NNSR. The revised definitions read as follows (strikethrough indicates language removed from the SIP in this action and underlined text indicates language added):

"For a regulated NSR pollutant, when a project involves multiple emissions units, ~~only~~ one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. However, the Technical Secretary is authorized to allow the use of multiple, pollutant specific consecutive 24-month baselines in determining the magnitude of a significant net emissions increase<sup>1</sup> and the applicability of major new source review requirements if all of the following conditions are met:

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<sup>1</sup> The "baseline actual emissions" for a proposed project are considered when determining whether a "significant emissions increase" will occur. If a "significant emissions increase" is shown as a result of the project, then the "net emissions increase" is calculated, considering contemporaneous and creditable increases and decreases from unrelated projects to determine whether the project will result in a "significant net emissions increase." Thus, the baseline period referenced here is most relevant to the determination of a "significant emissions increase."

I. Construction of a new source<sup>2</sup> or modification would become subject to major new source review if a single 2-year baseline is used for all pollutants.

II. One or more pollutants were emitted during such 2-year period in amounts that were less than otherwise permitted for reasons other than operations at a lower production or utilization rate. Qualifying examples include, but are not limited to, the voluntary use of:

- A. a cleaner fuel than otherwise permitted in a fuel burning operation (e.g., natural gas instead of coal in a multi-fuel boiler),
- B. a coating with a lower VOC content than otherwise permitted in a coating operation,
- C. a voluntary improvement in the control efficiency of an air pollution control device or the voluntary addition of a control device where one did not exist before, and
- D. alternate production methods, raw materials, or products that result in lower emissions of one or more pollutants.

III. Use of alternate 2-year baselines for the pollutants described in 2. above would result in the construction of the new source<sup>3</sup> or modification not being subject to major new source review.

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<sup>2</sup> Although the revision refers to modifications and new sources, it does not affect new sources or new units because Tennessee's SIP-approved rules require new sources/units to use the actual-to-potential test – not the actual-to-projected-actual test – and the corresponding baseline actual emissions for new sources/units are set to zero. This is consistent with federal rules. The revision only applies to projects that involve multiple existing emissions units.

<sup>3</sup> See footnote 2.

IV. The use of the multiple baselines is not prohibited by any applicable provision of the USEPA's new source review regulations.

The burden for demonstrating that these conditions are met is upon the permit applicant. The demonstration and the Technical Secretary's approval will be made a part of the permit record."

The changes mean that a project involving multiple emissions units is no longer subject to major NSR permitting under the revised definitions if it meets the limiting criteria identified above for the use of pollutant-specific baseline periods. EPA's major NSR rules do not contain such limiting criteria. Under the federal major NSR rules, a state must adopt the federal definitions into its SIP unless the state's definitions are more stringent than, or at least as stringent as, the federal definitions. *See* 40 CFR 51.165(a)(1) and 51.166(b). EPA finds that Tennessee's changes to its SIP-approved definitions of "baseline actual emissions" are more stringent than the federal definitions given the limiting criteria and are therefore allowable changes to Tennessee's SIP-approved NSR program pursuant to 40 CFR 51.165(a)(1) and 51.166(b).

Section 110(l) of the CAA prohibits EPA from approving a SIP revision that would interfere with any applicable requirement concerning attainment and RFP (as defined in section 171), or any other applicable requirement of the CAA. EPA has determined that the changes to the Tennessee SIP, as described above, would not violate section 110(l) for the following reasons: 1) Tennessee's changes will maintain the State program at a more stringent level than

the federal NSR requirements;<sup>4</sup> 2) the State is currently attaining all of the NAAQS except for the 2010 1-hour sulfur dioxide (SO<sub>2</sub>) NAAQS in a portion of Sullivan County;<sup>5</sup> and 3) any projects that would not qualify as major modifications under the revised definitions would still be subject to the preconstruction review and permitting requirements of Tennessee's SIP-approved minor NSR regulations at TAPCR 1200-3-9-.01(1). For a more complete discussion, see the NPRM.

### **III. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the portions of TAPCR 1200-3-9-.01 - "Construction Permits,"<sup>6</sup> which specifically revise the definitions of "baseline actual emissions" in Tennessee's SIP-approved PSD and NNSR regulations as discussed in Section II above,<sup>7</sup> state effective April 24, 2013. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under

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<sup>4</sup> EPA also believes that the impact, if any, on air quality as a result of the changes would be small given the nature of the actual-to-projected-actual test and the limited applicability of the multiple baseline provision.

<sup>5</sup> On May 12, 2017, TDEC submitted a plan to EPA to attain the 2010 1-hour SO<sub>2</sub> NAAQS in Sullivan County. EPA proposed approval of the of the Sullivan County attainment demonstration on June 29, 2018 (83 FR 30609).

<sup>6</sup> The title of this regulation is erroneously listed as "Definitions" in the "Title/subject" column of 40 CFR 52.2220(c). Therefore, EPA is correcting the "Title/subject" entry in this action.

<sup>7</sup> The state effective date of the rule changes to the definitions of "baseline actual emissions" in Tennessee's May 28, 2009, SIP revision is May 10, 2009. However, these changes to Tennessee's rule are captured and superseded by the version of TAPCR 1200-3-9-.01 that was state effective on April 24, 2013. On July 25, 2013 (78 FR 44889), EPA approved portions of the April 24, 2013 version of TAPCR 1200-3-9-.01 that were included in a May 10, 2013 SIP revision and modified the state effective date at 40 CFR 52.2220(c) accordingly.

sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>8</sup>

#### **IV. Final Action**

EPA is approving the changes to the definitions of "baseline actual emissions" in Tennessee's SIP-approved PSD and NNSR regulations at TAPCR 1200-3-9-.01(4) - "Prevention of Significant Air Quality Deterioration" and 1200-3-9-.01(5)(b) - "Nonattainment Areas," respectively, because they are consistent with the CAA and federal regulations.

#### **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

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<sup>8</sup> *See* 62 FR 27968 (May 22, 1997).

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.



The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 10, 2018.

Onis “Trey” Glenn, III,  
Regional Administrator,  
Region 4.

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart RR—Tennessee**

2. In §52.2220, table 1 in paragraph (c) is amended by revising the entry “Section 1200-3-9-.01” to read as follows:

**§52.2220 Identification of plan.**

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(c) \* \* \*

**Table 1—EPA Approved Tennessee Regulations**

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
<b>CHAPTER 1200-3-9 CONSTRUCTION AND OPERATING PERMITS</b>				

Section 1200-3-9-.01	Construction Permits	4/24/2013	<b>[insert date of publication in the Federal Register], [insert Federal Register citation]</b>	EPA approved Tennessee's May 10, 2013, SIP revision to Chapter 1200-3-9-.01 on July 25, 2013, with the exception of the PM <sub>2.5</sub> SILs (at 1200-3-9-.01(5)(b)1(xix)) and SMC (at 1200-3-9-.01(4)(d)6(i)(III)) as promulgated in the October 20, 2010, PM <sub>2.5</sub> Increments-SILs-SMC Rule.
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[FR Doc. 2018-20629 Filed: 9/21/2018 8:45 am; Publication Date: 9/24/2018]